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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/291,538	04/14/1999	HIDENORI OGATA	005586/D8326	2245

26021 7590 06/25/2002

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LOS ANGELES, CA 90071-2611

EXAMINER

WILCZEWSKI, MARY A

ART UNIT	PAPER NUMBER
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2822

DATE MAILED: 06/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/291,538

Applicant(s)

Ogata et al.

Examiner

Mary Wilczewski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 14, 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-11 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☒ Certified copies of the priority documents have been received in Application No. 08/911,505.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Drawings***

The drawings filed on April 14, 1999, have been objected to by the Draftsperson; note the attached form PTO-948.

It is noted that Applicants have submitted eight sheets of photographs. Color photographs and color drawings are acceptable only for examination purposes unless a petition filed under 37 CFR 1.84(a)(2) is granted permitting their use as acceptable drawings. In the event that applicant wishes to use the drawings currently on file as acceptable drawings, a petition must be filed for acceptance of the color photographs or color drawings as acceptable drawings. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and an amendment to the first paragraph of the brief description of the drawings section of the specification which states:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the U.S. Patent and Trademark Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings have been satisfied.

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***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119

(a)-(d). The certified copy has been filed in parent Application No. 08/911,505, filed on August 14, 1997.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 9 is rejected under 35 U.S.C. 102(a) as being anticipated by Kamiya et al., the article entitled "Excimer Laser Annealing SLA3600".**

Kamiya et al. disclose a thin film transistor having a polycrystalline silicon layer formed by a laser annealing technique in which the optical profile of the laser beam in the width direction is tapered and smoothed, see pages 1 and 2 of the English-language translation and Figure 2 (Type D). The maximum intensity of the laser beam shown in the intensity Profile Type D in Figure 2 is considered the upper limit energy level at which maximum grain size in the semiconductor layer results.

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**Claims 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Chae, U. S. Patent 5,432,122.**

Chae discloses a thin film transistor used in a liquid crystal display wherein the polycrystalline silicon active layer is formed by laser annealing an amorphous silicon film in which the energy level of the laser beam in a rear area of a region of the film along the scan direction of the laser beam is lower than the upper limit energy level which maximizes the grain size of the polycrystalline silicon layer, see figures 7 and 9A and 9B. In figure 9A the maximum energy in the center of the beam is taken to be the upper limit energy level at which maximum grain growth occurs.

The present claims are product-by-process claims, hence, the instant claims are directed to the product per se, no matter how actually made. Applicant has merely chosen to define the claimed product by the process by which it was made. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based upon the product itself. The patentability of a product does not depend on its method of production. If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product is made by a different process. *In re Thorpe* 227 USPQ 964, 966 (Fed. Cir. 1985). Process limitation are significant only to the extent that they distinguish the claimed product from that of the prior. In this application the instant claims are directed to a transistor having a polycrystalline silicon layer. Burden is on Applicant to

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specifically point out how their laser annealing process materially distinguishes the polysilicon layer of the present claims from that of the applied prior art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Wilczewski whose telephone number is (703) 308-2771.

A handwritten signature in black ink, appearing to be 'M. Wilczewski', with a stylized, flowing script.

M. Wilczewski  
Primary Examiner  
Tech Center 2800

MW  
June 20, 2002